

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

EMILIO URIBE,

No. 1:16-CV-03105-FVS

Plaintiff,

REPORT AND
RECOMMENDATION TO GRANT
STIPULATED ORDER FOR
REMAND

COMMISSIONER OF SOCIAL
SECURITY,

ECF Nos. 14, 22

Defendant.

COMMISSIONER OF SOCIAL
SECURITY,

The parties filed a Stipulated Motion for Remand pursuant to sentence four of 42 U.S.C. §405(g). ECF No. 22. This matter has been referred to the undersigned magistrate judge for issuance of a report and recommendation. ECF No. 23.

After consideration, IT IS RECOMMENDED that the Stipulated Motion for Remand (ECF No. 22) be GRANTED. The Commissioner's final decision should be reversed and remanded for further proceedings pursuant to sentence four of 42 U.S.C. §405(g). Upon remand to the Commissioner of Social Security, the Appeals Council should remand this case to the Administrative Law Judge (ALJ) for a de novo hearing and a new decision. On remand, the ALJ will further

evaluate the medical evidence, including but not limited to the medical opinions; further evaluate the credibility of Plaintiff's subjective complaints; further evaluate Plaintiff's residual functional capacity; and allow Plaintiff to testify and present evidence. If necessary, the ALJ will obtain additional vocational expert testimony, and take further action to complete the administrative record.

The parties stipulate that this case be reversed and remanded to the ALJ on the above grounds pursuant to sentence four of 42 U.S.C. § 405(g). Therefore, the matter should be remanded to the Commissioner for additional proceedings pursuant to sentence four 42 U.S.C. 405(g). Upon proper presentation, this Court will consider Plaintiff's application for costs and attorney's fees under 28 U.S.C. § 2412(d).

It is further RECOMMENDED that Plaintiff's Motion for Summary Judgment (ECF No. 14) be DENIED as moot, given the parties motion for remand.

OBJECTIONS

Any party may object to a magistrate judge's proposed findings, recommendations or report within **fourteen (14)** days following service with a copy thereof. Such party shall file written objections with the Clerk of the Court and serve objections on all parties, specifically identifying the portions to which objection is being made, and the basis therefor. Any response to the objection shall be filed within **fourteen (14)** days after receipt of the objection. Attention is

directed to FED. R. CIV. P. 6(d), which adds additional time after certain kinds of service.

A district judge will make a *de novo* determination of those portions to which objection is made and may accept, reject or modify the magistrate judge's determination. The judge need not conduct a new hearing or hear arguments and may consider the magistrate judge's record and make an independent determination thereon. The judge may, but is not required to, accept or consider additional evidence, or may recommit the matter to the magistrate judge with instructions. *United States v. Howell*, 231 F.3d 615, 621 (9th Cir. 2000); 28 U.S.C. § 636(b)(1)(B) and (C), Fed. R. Civ. P. 72; LMR 4, Local Rules for the Eastern District of Washington.

A magistrate judge's recommendation cannot be appealed to a court of appeals; only the district judge's order or judgment can be appealed.

The District Court Executive is directed to enter this Report and Recommendation, forward a copy to Plaintiff and counsel, and **SET A CASE MANAGEMENT DEADLINE ACCORDINGLY.**

DATED April 17, 2017.

s/Mary K. Dimke
MARY K. DIMKE
UNITED STATES MAGISTRATE JUDGE